

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 RONALD SILVA,

4 Plaintiff

5 v.

6 JAMES STOGNER, et. al.

7 Defendants

Case No.: 3:20-cv-00027-ART-CSD

**REPORT & RECOMMENDATION OF  
U.S. MAGISTRATE JUDGE**

Re: ECF No. 33

9 This Report and Recommendation is made to the Honorable Anne R. Traum, United  
10 States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28  
11 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

12 Before the court is Plaintiff's motion for substitution of Defendants. (ECF No. 33.)  
13 Defendants filed a response. (ECF No. 39.) Plaintiff filed a reply. (ECF No. 41.)

14 For the reasons set forth below, the motion should be granted in part and denied in part.

15 **I. BACKGROUND**

16 Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC),  
17 proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983 and the Religious  
18 Land Use and Institutionalized Persons Act of 2000 (RLUIPA). The events giving rise to this  
19 action took place when Plaintiff was housed at Northern Nevada Correctional Center (NNCC).

20 The court screened Plaintiff's first amended complaint (FAC) and allowed him to  
21 proceed with claims under the First Amendment's Free Exercise Clause and RLUIPA against  
22 Stogner, Snyder and Walsh. The claims are based on allegations that Defendants denied Plaintiff,  
23 who is a Messianic Jew, a variety of religious items, denied him the ability to receive donated

1 religious items, denied him the ability to properly observe Saturday Sabbath services, and  
2 hindered his ability to properly observe holy feast days, without any reasonable basis for doing  
3 so. (ECF No. 27.) Plaintiff's claim that Roskam and Brumfield denied him a proper Messianic  
4 Jewish diet for his holy feast days was dismissed without prejudice, as was his equal protection  
5 claim alleging that Stogner and Walsh have shown favoritism by accommodating other religions  
6 but not Messianic Jews. (*Id.*) Plaintiff was given leave to file a second amended complaint,  
7 which he did, and which the court screens in a separate order.

8 On July 5, 2022, Defendants filed a notice indicating Snyder had passed away. (ECF No.  
9 30.)

10 On July 11, 2022, District Judge Traum issued an order that if a motion to substitute the  
11 proper party was not made under Rule 25 within 90 days, Snyder would be dismissed. (ECF No.  
12 32.)

13 On August 5, 2022, Plaintiff filed this motion to substitute. (ECF No. 33.)

## 14 II. DISCUSSION

15 Plaintiff asserts that Snyder was the supervisor of the RRT. Plaintiff seeks to substitute  
16 Julio Calderon for Snyder, claiming that Calderon is the current RRT supervisor. Plaintiff also  
17 asks the court to serve a notice on Snyder's estate "for any and all of the monetary damages,  
18 punitive and compensatory ordered by this court, in this civil action." (ECF No. 33.)

19 Defendants respond that there is no supervisor for the RRT, and instead, the RRT, under  
20 Administrative Regulation (AR) 810.04(2), consists of a warden, a chaplain, and their designees.  
21 Moreover, there is no evidence Calderon is Snyder's successor in interest. Defendants assert,  
22 however, that Deputy Director Williams can be substituted insofar as Plaintiff sued Snyder in his  
23 official capacity.

1 Defendants also argue the court should deny Plaintiff's request for service of a notice on  
2 Snyder's estate because the court has not ordered any damages and there is no provision  
3 allowing for pretrial seizure of Snyder's property.

4 If a party dies and the claim is not extinguished, the court may  
5 order substitution of the proper party. A motion for substitution  
6 may be made by any part or by the decedent's successor or  
7 representative. If the motion is not made within 90 days after  
8 service of a statement noting the death, the action by or against the  
9 decedent must be dismissed.

10 Fed. R. Civ. P. 25(a)(1).

11 Plaintiff has timely filed his motion to substitute. Plaintiff sued Snyder in his individual  
12 and official capacities. Insofar as Snyder is sued in his individual or personal capacity, the  
13 plaintiff has to pursue the action against the decedent's successor in interest such as the executor  
14 or administrator of his or her estate<sup>1</sup>. *Kentucky v. Graham*, 437 U.S. 159, n. 11 (1985); *see also*  
15 *LN Mgmt. v. JP Morgan Chase Bank*, 957 F.3d 943 (9th Cir. 2020).

16 Plaintiff has not provided any evidence that Snyder has an estate, let alone identified the  
17 executor or administrator of his estate for purposes of substitution. Substituting Calderon in  
18 Snyder's place insofar as Snyder is sued in his *individual* capacity is inappropriate because  
19 Calderon is not Snyder's successor in interest in his individual capacity.

20 With respect to Snyder being sued in his official capacity, Rule 25 provides that when a  
21 "public officer" is sued in his or her official capacity, the action does not abate when the public  
22 officer "dies, resigns, or otherwise ceases to hold office while the action is pending." Fed. R.  
23 Civ. P. 25(d). Instead, "[t]he officer's successor is automatically substituted as a party." *Id.*

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<sup>1</sup> The estate itself, as opposed to the executor, is not a legal entity.

1 Assuming, without deciding, that Snyder was a “public officer” for purposes of Rule  
2 25(d), Defendants assert that Deputy Director Williams may be substituted for Snyder insofar as  
3 he is sued in his official capacity. Calderon is not an appropriate substitute as Defendants  
4 represent there is no “supervisor” of the RRT.

5 In sum, Plaintiff’s motion should be granted insofar as Deputy Director Williams should  
6 be substituted for Snyder in his official capacity. Snyder should be dismissed insofar as he is  
7 sued in his individual or personal capacity. The dismissal should be without prejudice. Rule  
8 25(a)(1) “does not specify whether the dismissal ‘must’ be *with prejudice*.” *Zanowick v. Baxter*  
9 *Healthcare Corp.*, 850 F.3d 1090, 1094 (9th Cir. 2017) (emphasis original). The Ninth Circuit  
10 has noted, however, that “the ‘history of Rule 25(a) and Rule 6(b) makes it clear that the 90 day  
11 time period was not intended to act as a bar to otherwise meritorious actions, and extensions of  
12 the period may be liberally granted.’” *Id.* (quoting *Cont’l Bank, N.A. v. Meyer*, 10 F.3d 1293,  
13 1297 (7th Cir. 1993) (citation omitted); *United States v. Miller Bros Constr. Co.*, 505 F.2d 1031,  
14 1035 (10th Cir. 1974); 7C Charles Alan Wright, et. al., Federal Practice and Procedure § 1955  
15 (3d ed. 2017)). Rule 6(b) would govern a late motion to substitute. *Id.* at 1095.

16 In case Plaintiff should obtain information identifying Snyder’s executor or administrator  
17 after expiration of the 90-day period, Snyder’s dismissal in his individual capacity should be  
18 without prejudice (however, Plaintiff will have to make the requisite showing under Rule 6(b)).  
19 *See id.* (noting that dismissal with prejudice is not mandatory).

### 20 III. RECOMMENDATION

21 IT IS HEREBY RECOMMENDED that the District Judge enter an order **GRANTING**  
22 **IN PART AND DENYING IN PART** Plaintiff’s motion to substitute Defendants (ECF No.  
23 33). Plaintiff’s motion should be **DENIED** as to his request to substitute Calderon in Snyder’s

1 place (in either his individual or official capacity). Plaintiff's motion should be **GRANTED**  
2 insofar as the court should substitute Deputy Director Williams in place of Snyder in his official  
3 capacity. Snyder should be **DISMISSED WITHOUT PREJUDICE** insofar as he is sued in his  
4 individual capacity. Any motion to substitute that identifies Snyder's executor or administrator  
5 after expiration of the 90-day period must make the requisite showing under Rule 6(b).

6 If this Report and Recommendation is adopted, the Attorney General's Office should be  
7 given 14 days from any order adopting the Report and Recommendation to file a notice  
8 indicating whether it will accept service for Deputy Director Williams.

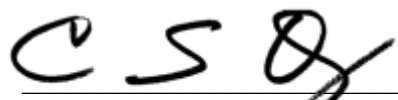
9 The parties should be aware of the following:

10 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to  
11 this Report and Recommendation within fourteen days of being served with a copy of the Report  
12 and Recommendation. These objections should be titled "Objections to Magistrate Judge's  
13 Report and Recommendation" and should be accompanied by points and authorities for  
14 consideration by the district judge.

15 2. That this Report and Recommendation is not an appealable order and that any notice of  
16 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed  
17 until entry of judgment by the district court.

18  
19 **IT IS SO ORDERED.**

20 Dated: September 28, 2022

21 

22 Craig S. Denney  
23 United States Magistrate Judge